

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:02-CR-64-0-BO
No. 5:05-CV-632-BO

RICKY SILVER,

Petitioner,

v.

UNITED STATES OF AMERICA,


Respondent.

ORDER

This matter is before the Court on Government's Renewed Motion to Dismiss or for Summary Judgment on Petitioner's 28 U.S.C § 2255, Motion to Vacate, Set Aside or Correct Sentence. The only remaining issue is Petitioner's claim that resentencing counsel failed to file an appeal upon Petitioner's request. Petitioner was informed by Roseboro letter that the Government's Motion would be treated as a Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and as such, Petitioner must support his allegations with affidavits or other evidence to show that a genuine issue of material fact exists. In response to Petitioner's claims of ineffective assistance of counsel, the Government filed an affidavit of the resentencing attorney, who stated that Petitioner never requested such an appeal. Petitioner was directed to file a response by July 12, 2006. On August 25, 2006, when Petitioner failed to respond, this Court ordered that the Petitioner respond within thirty days, or the Government's unopposed Motion for Summary Judgment would be granted. To date, Petitioner has not responded, leaving no genuine issue of material fact, and no need for an evidentiary hearing.

Government's Motion for Summary Judgment is GRANTED.

SO ORDERED, this 15 day of November, 2006.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE